

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Allegiance Telecom, Inc., Debtor-in-Possession,)	
Assignor)	
)	
and)	WC Docket No. 04-13
)	IB Docket No. ITC-ASC-
Qwest Communications International Inc.,)	20040112-00012
Assignee)	
)	
Joint Application for Consent to Assignment)	
of Assets under Section 214 of the)	
Communications Act of 1934, as Amended)	

**JOINT OPPOSITION TO MOTION TO EXTEND OR
POSTPONE COMMENT PERIOD**

Qwest Communications International Inc. (“Qwest”) and Allegiance Telecom, Inc. (“Allegiance”) (collectively, the “Applicants”), by their attorneys, hereby submit this joint opposition to the “Motion to Extend or Postpone Comment Period” (“Motion”) filed in the above-captioned docket by Eschelon Telecom, Inc. (“Eschelon”).

Eschelon’s Motion should be denied. As an initial matter, the Motion is untimely because Eschelon filed it just two days before comments are due. Eschelon provides no excuse whatsoever for waiting until the last moment to make this request. ^{1/}

^{1/} No one else has requested a delay in the comment period. Given the late hour of Eschelon’s request, the Commission can assume that any other potential parties have finished their review of the Application and, to the extent they may have concluded that comments are appropriate, largely completed that work.

Furthermore, Eschelon disregards the time-sensitive nature of this Application, and the potential impact of delay on Allegiance's creditors and customers, on Qwest, and on the public at large. As the Commission is aware, Allegiance has been in bankruptcy since May 2003. On December 18, 2003, the Applicants entered into an Asset Purchase Agreement pursuant to which Qwest will acquire substantially all of Allegiance's assets. The Applicants promptly filed their Application with the Commission on December 31, 2003, describing the transaction and the bankruptcy process and emphasizing the need for rapid Commission processing. The Commission issued its Public Notice of the Application on January 21, 2004, recognizing that an "expedited comment cycle . . . is appropriate based on bankruptcy considerations in this case."^{2/} Now, just two days before comments on the Application are due, and without presenting any new facts, Eschelon seeks an extension of time.

Eschelon's request for delay serves only its own private convenience. By disregarding the public interest in completing the comment cycle in this proceeding on schedule, Eschelon seeks to prevent the Commission from being in a position to act on the Application promptly. Grant of Eschelon's motion would be a disservice to Allegiance and its customers and creditors, who need resolution of this matter at the earliest possible date. For instance, Allegiance's creditors and the bankruptcy court judge presiding over the case have made clear that they expect any transaction involving Allegiance assets to involve prompt payment to the creditors. Allegiance's customers also look forward to increased certainty based on resolution of the pending bankruptcy, and to the benefits of the new services the transaction will foster. The Commission

^{2/} Public Notice, DA 04-136, at 2 (released Jan. 21, 2004)

recognized these important interests in the Public Notice when it set the comment cycle as it did.

Delay also would be a disservice to Qwest, which is preparing to acquire the regulated assets of Allegiance as soon as possible. That work is running in parallel with the bankruptcy process and this Commission's review.

Most important, delaying the Commission's review risks deferral of the transaction's much larger public interest benefits. Acquisition of the Allegiance assets will dramatically expand Qwest's ability to compete in local exchange markets across the country, linking new consumers to its nationwide fiber network and accelerating its ability to bring new broadband services to the public. The transaction combines the resources and experiences of Qwest and Allegiance to create a new competitive force in the U.S. telecommunications marketplace. Indeed, the transaction will promote one of the fundamental objectives of the Telecommunications Act of 1996 and federal telecommunications policy by effectuating the widespread competitive expansion of Qwest, a Regional Bell Operating Company ("RBOC"), into the local service territories of other RBOCs.

Eschelon nevertheless argues that delay is justified because third parties may present alternative proposals to the bankruptcy court to purchase the Allegiance assets. But that is not a basis for changing the comment period prescribed in the Public Notice. The Applicants have a firm contract. As in other transactions, it is possible that an intervening offer may lead Allegiance to terminate its contract with Qwest. However,

absent such an event, the Agreement remains in full force and Qwest and Allegiance will close as soon as possible.^{3/}

Contrary to Eschelon's rhetoric, neither the Commission nor third parties are inconvenienced by the current schedule. The Commission does not need to take any action until after reply comments have been filed on February 11. The bankruptcy court has set a hearing on February 19 to confirm the purchase of Allegiance assets. Indeed, even if the Commission were to act prior to the issuance of a sale order, the Commission's approval is permissive, not mandatory, and therefore does not in any way prejudice the outcome of the bankruptcy court process. Therefore, for all of the reasons set forth above and in the Application, it is manifestly in the public interest for the Commission's process to proceed in tandem with that of the court so that the parties may be able to close promptly. The sooner the record here is completed, the sooner the Commission can evaluate that record and act, and the sooner consumers across the United States can enjoy the benefits of this transaction. Meanwhile, Eschelon and any other potential parties are situated no differently here than they would be with respect to any other transaction subject to public comment.

In short, Eschelon ignores the consumer interest in certainty and the public interest in vigorous competition, both of which will be served by the current comment cycle. Instead, Eschelon supports its motion only with reference to its own private

^{3/} Eschelon also notes that applications for state approval of the transaction were filed January 20, 2004. This is not a reason for the FCC to delay its review in this proceeding. The transaction has been structured to accommodate the needs of creditors, who are demanding payment as soon as possible, and of customers, who need continuity of service. To that end, Qwest has agreed to make payment under the Asset Purchase Agreement upon bankruptcy court approval and completion of a limited number of closing conditions, not including FCC and state regulatory approvals. Qwest then will acquire Allegiance's regulated assets (including customers of specific services) over time as regulatory approvals are received. Some states do not have such approval processes for assets under intrastate jurisdiction, so no delay need arise. In all cases time is of the essence, including in particular action by this Commission.

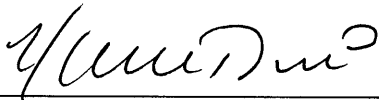
convenience, does so on an untimely basis, and offers no new facts to support its position.

The Commission should promptly deny Eschelon this extension and reaffirm its previously announced schedule in this proceeding.

Respectfully submitted,

**QWEST COMMUNICATIONS
INTERNATIONAL INC.**

**ALLEGIANCE TELECOM, INC.,
DEBTOR-IN-POSSESSION**



Peter A. Rohrbach
Mace J. Rosenstein
Yaron Dori
Hogan & Hartson L.L.P.
555 13th Street NW
Washington, D.C. 20004
Phone: (202) 637-5600
Fax: (202) 637-5910

Andrew Crain
Associate General Counsel

Daphne Butler
Senior Attorney

Qwest Services Corporation
1801 California, 38th Floor
Denver, CO 80202
Phone: (303) 672-2926
Fax: (303) 295-7069



Jean L. Kiddoo
Paul O. Gagnier
Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
Phone: (202) 424-7500
Fax: (202) 424-7634

Mark A. Stachiw
Senior Vice President and General
Counsel – Allegiance Telecom
Company Worldwide
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, Texas 75231
Phone: (469) 259-2099
Fax: (469) 259-9122

Dated: February 3, 2004

CERTIFICATE OF SERVICE

I, Cecelia Burnett, certify that I have on this 3rd day of February, 2004, caused a true and correct copy of the foregoing Joint Opposition of Motion to Extend of Postpone Comment Period to be sent by first-class U.S. mail, postage prepaid, to each of the following:

Tracey Wilson
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C437
Washington, D.C. 20554

Dennis Johnson
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 6-A461
Washington, D.C. 20554

William Dever
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C266
Washington, D.C. 20554

David Krech
International Bureau
Federal Communications Commission
445 12th Street, S.W., Room 7-A664
Washington, D.C. 20554

Cynthia Bryant
Telecommunications Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., Room 7-A623
Washington, D.C. 20554

Ann Bushmiller
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W., Room 8-A831
Washington, D.C. 20554

E. Asthton Johnston
Vincent M. Paladini
Piper Rudnick LLP
1200 19th Street, N.W.
Washington, D.C. 20036

Qualex International
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554